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December 19, 2001

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Attn: Art Unit 2162
Patent Examiner Jeffrey D. Carlson

Re: **Application Serial No.:** 09/233,249
Applicant: Harold V. Putman
Title: Automated Transaction Machine And Method
Docket No.: D-1086

Sir:

Please find enclosed Applicant's Request for Withdrawal of Premature Final Rejection in response to the Office Action dated October 19, 2001.

No fee should be due. However, if any fees are due associated with the prosecution of this Application, please charge Deposit Account 09-0428 (InterBold).

Very truly yours,

Ralph E. Jocke

CERTIFICATE OF MAILING BY EXPRESS MAIL

I hereby certify that this document and the documents indicated as enclosed herewith are being deposited with the U.S. Postal Service as Express Mail Post Office to addressee in an envelope addressed to Box AF, Commissioner for Patents, Washington, D.C. 20231 this 19th day of December 2001.

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#17
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of)
Harold V. Putman)
Serial No.: 09/233,249)
Filed: January 19, 1999)
For: Automated Transaction Machine)
And Method)

RECEIVED
DEC 27 2001
Art Unit: 2162
Patent Examiner **Technology Center 2100**
Jeffrey D. Carlson

Box AF
Commissioner of Patents and Trademarks
Washington, D.C. 20231

REQUEST FOR WITHDRAWAL OF PREMATURE FINAL REJECTION

Sir:

Applicants respectfully request reconsideration of the finality of the rejection in the Office Action dated October 19, 2001. Applicants respectfully submit that the Final rejection should be withdrawn as it is legally improper. The Office has failed to show that the Bosak reference is prior art. As rejections of claims 1-44, 50, and 52-56 under 35 U.S.C. § 102(b) and 35 U.S.C. § 103(a) in the Action were based fully or in part on the Bosak reference, it is respectfully requested that the rejections of claims 1-44, 50, and 52-56 be withdrawn on this basis.

The Bosak reference cited in the Action appears to be an electronic or Internet

publication retrieved from the URL:

<http://ibiblio.org/pub/sun-info/standards/xml/why/xmlapps.htm>.

Prior art disclosure on the Internet or on an on-line database can only be considered to be publicly available as of the date the item was publicly posted. As indicated in MPEP § 2128, "If the publication does not include a publication date (or retrieval date), it cannot be relied upon as prior art under 35 U.S.C. 102(a) or (b)."

In the previous Action dated May 23, 2001, the Office asserted that a "Last revised" date of "1997.03.10." in the text of Bosak corresponds to a publication date. However, the Bosak reference does not indicate that this "Last revised" date is a publication date or a retrieval date. In the present Action, the Office asserts that a "Last Modified" date of 3/10/1997, associated with the Bosak reference, corresponds to a "posting (and therefore, publication) date".

Applicants disagree.

As shown in the "Page Info" printouts attached to the Action, the date associated with the Bosak HTML file is labeled "Last Modified". Such a "Last Modified" date corresponds to the file date of the Bosak HTML file, which can only be used to establish when the HTML file was created or changed. The "Last Modified" date is not a publication date or a retrieval date and therefore is not evidence that the Bosak HTML file was posted or published on this date. For example, the URL where the Bosak reference is located may have been password protected or may not have even existed at the time the Bosak HTML file was created or last modified. The Office has provided no evidence to corroborate that the URL associated with the Bosak HTML file was publically available prior to Applicant's priority date of October 19, 1998 and filing date of January 19, 1999.

In addition, the web site, where the URL is located, suggests that the URL did not exist in

its present form prior to May 24, 1999, which is after Applicants priority and filing dates. The attached print out shows a directory listing of the files currently found at the URL where the Bosak reference is located. The directory listing can be publicly displayed by pointing a browser to:

<http://www.ibiblio.org/pub/sun-info/standards/xml/why/>

This URL corresponds to the URL of the Bosak reference without the Bosak HTML file name: "xmlapps.htm".

This directory listing displays the "Last modified" file date associated with each of the files in this directory including the "Last modified" file date of the Bosak reference. One of the entries in the directory listing corresponds to the "Parent Directory" for the portion of the URL named "/xml/". The "Last modified" date for this portion of the URL is May 24, 1999 which is after Applicants priority and filing dates. Thus, if the Office is relying on "Last Modified" dates to establish when the Bosak reference was posted, the last modified date for the "/xml/" directory indicates that the Bosak reference was not posted at the present URL until May 24, 1999.


The inconsistencies between the "Last Modified" dates for portions of the URL and the Bosak HTML file further indicates that such dates can not be relied upon to establish publication dates. Such dates are not capable of corroboration and cannot be used to establish prior art status. At best such dates are an assertion that the document was revised by the author on this date. Nothing of record indicates or in any manner establishes that the Bosak document was posted on the Internet and publicly available as of the purported revision or last modified date.

The Action purports to show by way of example that uploading a file to a web site establishes its "Last Modified" date. Applicants disagree. Transferring an HTML file to a

specific directory or URL on a web server may or may not change its "Last Modified" date depending on the method used to transfer or copy the file. For example, coping a file on a web server from one directory to another directory using a standard Unix/Linux command such as "cp" or a DOS command such as "copy" will not change the "Last Modified" or file date associated with an HTML file.

As the Office has provided no evidence to show how the Bosak reference was transferred to the web site associated with the URL of Bosak, the Office has failed to establish that a "Last Modified" date for the Bosak reference corresponds to a publication date. Furthermore, even if the uploading of the Bosak reference to a web site did establish its "Last Modified" date, such an occurrence does not prove that the URL associated with the Bosak reference was publically available as of the "Last Modified" date. As a result, the Action has not met its burden of showing that the Bosak reference is prior art and the rejections based on the Bosak reference are not proper. Therefore, the Final rejection is premature. Applicants respectfully submit that the finality of the Office Action dated October 19, 2001 should be withdrawn.

Respectfully submitted,



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